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Filed March 13, 1901.

Supreme Court of the United States.

OCTOBER TERM, A. D. 1900.

[redacted], et al.,
Plaintiffs in Error,
vs.
[redacted],
Defendants in Error.

Error to Supreme Court of the State of Illinois.

BRIEF AND ARGUMENT OF COUNSEL FOR PLAINTIFFS IN ERROR.

[redacted]
Counsel for Plaintiffs in Error.

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IN THE

Supreme Court of the United States

OF THE OCTOBER TERM, A. D. 1900.

THOMAS F. FARRELL et al., *Plaintiffs in Error,* *vs.* WEST CHICAGO PARK COMMISSIONERS, *Defendants in Error.*	Error to Supreme Court of the State of Illinois.

BRIEF AND ARGUMENT OF COUNSEL FOR PLAINTIFFS IN ERROR

I.

STATEMENT OF FACTS.

MAY IT PLEASE THE COURT:

This is a special assessment proceeding brought by the town of West Chicago in 1893, for the purpose of obtaining the cost for improving Douglas boulevard, which extends from Douglas Park to Garfield Park. The original proceedings were confirmed as against the property of the plaintiffs in error herein in 1893. In 1895 separate writs of error were sued out by the plaintiffs in error herein from the supreme court of Illinois, and, upon a hearing thereof the supreme court adopted its decision theretofore rendered in the case of

Culver v. *The People*, 161 Ill., 89, and reversed the judgment of confirmation and remanded the causes for further proceedings.

The writs of error involving the property of the plaintiffs in error herein are known in the supreme court of Illinois as *Farrell et al.* v. *West Chicago Park Commissioners*, 162 Ill., 280; *Connor et al.* v. *Same*, 162 Ill., 287, and *White et al.* v. *Same*, 164 Ill., 196.

In the month of August, 1896, and prior to the entry of the remanding order above referred to, the defendants in error filed their petition in the county court for a new special assessment to pay for the cost of the improvement theretofore made under the proceedings which had been declared invalid as to the property of the plaintiffs in error, as above set forth.

Upon the motion entered on behalf of the plaintiffs in error herein, the petition in said cause lastly above referred to was dismissed out of said county court by reason of the previous decisions of the supreme court, declaring the original assessment to be invalid. An appeal was taken by the defendants in error herein to the supreme court, where the finding of the county court, in dismissing said petition, was reversed and the cause remanded. *West Chicago Park Commissioners* v. *Farber et al.*, 171 Ill., 146.

A retrial was had in said cause in the county court, which resulted in a verdict and judgment in favor of the defendants in error herein, and a confirmation of said assessment. An appeal was taken from such judgment to the supreme court of Illinois, and, on December 21, 1898, an order was entered in said supreme court setting aside said judgment and remanding said cause. On

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February 9, 1899, a rehearing was granted to the defendants in error herein. On October 13, 1899, said supreme court entered its order affirming the judgment of the county court. After the denial of a rehearing by the supreme court, the plaintiffs in error herein sued out a writ of error from this Honorable Court for a review of the action of the supreme court in confirming the judgment of the county court.

It will be seen from the above that the matter in controversy herein has been twice determined in the county court, once in favor of the plaintiffs in error and once in favor of the defendants in error; that it has been the subject of investigation and determination in the supreme court on four separate occasions two opinions being in favor of plaintiffs in error and two in favor of defendants in error. On the last appeal the supreme court first rendered its opinion for the plaintiffs in error, and upon a petition for rehearing, which was allowed, reversed its former opinion and gave one in favor of the defendants in error.

Without commenting upon the diversity of the conclusions of the courts before which this matter has been pending, we may state without fear of successful criticism that it seldom occurs that a single subject of litigation is determined in two different ways by the trial court, and in four different ways by the supreme court of a state, each subsequent decision overruling the prior one.

The proceedings for the original assessment under which the improvement was constructed are based upon an ordinance passed by the town of West Chicago on March 28, 1893. (Printed Rec., 25; Rec., 94.) The petition which was filed by the town of West Chicago,

in pursuance of said ordinance, appears on page 27 of printed record, and 97 of record. The ordinance was passed and petition filed under the provisions of an act of the legislature of Illinois, which was approved on May 2, 1873, and in force July 1, 1873.

An examination of the petition and ordinance referred to, and an inspection of the exhibits which appear after page 60 in the printed abstract, show that Douglas boulevard is 250 feet in width; that the center 130 feet thereof is designated as a lawn, while sixty feet on either side of such center lawn is to be used for boulevard purposes, forty feet on the north and east side being a macadam roadway, while forty feet on the south and west sides is an asphalt roadway. The outer borders of the boulevard contain side lawns twelve feet in width, and macadam sidewalks eight feet in width. It will be seen that the boulevard is, to all intents and purposes, a part of the park system, and that it forms a connecting link between the two parks named; that is, it is strictly a pleasure way from which all traffic, except pleasure vehicles, is prohibited.

Pursuant to the petition and ordinance above referred to, the county court, in accordance with the terms and requirements of the act of 1873, appointed commissioners to make an assessment against the property abutting upon said boulevard. An assessment was thereafter made and confirmed as to the property of plaintiffs in error, as previously stated. In the petition for an order of confirmation, it is alleged that the preliminary consenting petition for the making of said improvement, which consenting petition was required by said act of 1873, was obtained by said park board; that such consenting petition prayed for "the making and levying of a special

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assessment or special tax upon the property, lots and land contiguous to and abutting upon said boulevard so proposed to be improved for the purpose of paying the cost of said improvement, the costs and expenses of making, levying and collecting the same, and that the owners of a majority of the property so fronting or abutting on said boulevard had petitioned and requested said West Chicago park commissioners so being in the control and management of said boulevard, to make said improvement and to cause a special assessment or special tax to be levied on the property abutting on said boulevard for the purpose of paying the cost thereof. * * *''

The petition of the town of West Chicago, above referred to, recites, as the authority for such proceedings, said act of the legislature of Illinois, portions of which are herein set forth. Said act provides that, if such corporate authorities shall determine to make such improvement, they shall prescribe that the same shall be made by ''special assessment or special taxation on contiguous property.'' Said act also provides ''that no improvement or sewer shall be made or constructed under the provision of this section except upon the petition of the owners of a majority of the land fronting upon the proposed improvement or sewer.''

The foregoing references to the original petition for the improvement and the act under which such petition was filed, show that the entire cost of said improvement was to be charged upon the property abutting thereon and upon no other property; that no provision was made either in the ordinance or petition requiring a determination as to the particular and actual benefits which would accrue to any of the property from the proposed improvement.

The ordinance and the petition provide only that the entire cost of the improvement should be charged upon contiguous or abutting property, whether such property was benefited or not.

In the estimate of the cost of the improvement, which appears on page 32 of printed record, is a statement showing the frontage involved in the assessment to be 15,715 feet, and the amount per front foot, $16.59-4/10. While the amount of cost per front foot, as appears in the estimate, may be treated as surplusage, still it unquestionably shows that, in distributing the cost of the improvement upon the abutting property, the rate of $16.59 was cost fixed for each abutting foot, disregarding the depth of the lot, its situation in regard to the improvement and its fair value. In other words, the question of benefits, as to the respective pieces of property, could not have been considered. The proceedings as detailed in the ordinance and petition for the making of the improvement, simply require that the cost of the improvement should be distributed *pro rata* against the frontage at a fixed sum per front foot. We contend that an ordinance which provides that the entire cost of a proposed improvement shall be levied against abutting property, is in conflict with the established laws of the State of Illinois, and with the fourteenth amendment to the constitution of the United States, where there is no provision made in such ordinance to ascertain, in advance, that the total benefits to be derived by the respective pieces of land from such improvement would equal the amount of the assessment against the same.

The estimate which was made a part of the petition and proceedings under which the improvement was constructed, places the cost thereof at $260,783.85. The subsequent

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ordinance, and the one under consideration herein, fixes the cost of the improvement at $250,207.20. (Pr. Rec., 39.) The commissioners who estimated the cost to be charged against the property under the new proceedings, assessed against the district subject to the maintenance of parks under the control of the West Chicago park commissioners, $241.99, and the owners of abutting property were thereby relieved from the payment of the amount lastly set forth. It may be a digression to suggest that the West Chicago park commissioners, in determining that the entire district under their control would be benefited to the extent of $241.99 by reason of the construction of an improvement costing a quarter of a million dollars, were exceptionally conscientious in the performance of their duties in adjusting matters involving the expenditure of money between a class of property owners and the general public.

Many questions involved in the matter under consideration herein have been discussed at considerable length by counsel interested in the case of *Cummings* v. *West Chicago Park Commissioners*, which has been submitted, and is now pending before this Honorable Court. The *Cummings* case involves the same assessment as the one under consideration, the only difference being in the bill of exceptions and in certain objections and assignments of error presented by counsel for the respective parties interested in each of said cases. For this reason we will not burden the court with an extended comment on certain points involved herein. We trust, however, that the plaintiffs in error herein may have the same consideration on such matters as though such argument were made.

After the rendition of the opinions in the various cases involving the property of the plaintiffs in error herein, as

above set forth, an order was entered on March 12, 1897, in the county court of Cook county in pursuance of such remanding orders from the supreme court of Illinois, which order appears on page 43 of printed record. Said order contains, among other things, the following:

"And now again come said parties, by their said attorney, and move the court to enter an order herein in accordance with the opinion of said supreme court relating to the property hereinafter described, and the court being fully advised in the premises, it is ordered and adjudged that the judgment of confirmation in the matter of said special assessment, in so far as it relates to said property hereinafter described, be set aside and held for naught; and

It is further ordered and adjudged that all proceedings in the above-entitled matter, in so far as they relate to the property hereinafter described, be set aside and held for naught. It appears to the court that this court was without jurisdiction in the premises to enter an (any) order or to take proceedings at any time in said matter as to said property herein described.

The property hereinabove referred to, together with the names of the owners thereof, respectively, is described as follows, to wit:"

(Here follows descriptions of property of plaintiffs in error, although the same does not appear in the printed record.)

On page 34 of printed abstract is the following admission:

"Mr. Mecartney: It is conceded that the decision in the case of *People* v. *Culver*, 161 Ill., page 89, declaring an ordinance void in regard to Douglas boulevard special assessment, affects the ordinance which is offered and the proceedings in which this petition was filed, and related to this identical proceedings declared void."

The ordinance which is the basis of the proceedings un-

der consideration herein was passed July 14, 1896, and contains, among other things, the following provisions:

"* * * Whereas, certain proceedings were instituted by the corporate authorities of said town of West Chicago, in the county court of Cook county, on April 17th, A. D. 1893, for the levying of a special assessment for the cost of said improvement in pursuance of said ordinance, as case number 10,655 of said court, and

Whereas, the said boulevard improvement has been heretofore made and completed, and

Whereas, the said special assessment proceedings in said county court above mentioned, and the provisions of said ordinance for the payment of said improvement, have been heretofore and on the 28th day of March, A. D. 1896, declared void by the Supreme Court of Illinois, a court of competent jurisdiction, and the provisions of said ordinance for the special assessments have failed, and * * *" (Pr. Rec., 7.)

The ordinance from which the above quotation is taken was made a part of the petition upon which the assessment under consideration was made, and such petition contains substantially the same statement.

It will be seen from the above, that after the decision in the *Culver* case, declaring the ordinance of March 28, 1893, to be void, the town of West Chicago abandoned all further proceedings therein, as to the property of plaintiffs in error, as appears from the order of March 12, 1897.

In pursuance of said last mentioned ordinance, and in an attempted compliance with the act of 1895, a new estimate was made of the cost of said improvement, in which estimate is included the cost of the work already done, and the cost of making the special assessment provided for in such ordinance. The total of the estimate referred to is $250,207.20, which includes as public benefits $241.99.

The new assessment which was made in pursuance of

such ordinance and petition disregarded the original void assessment, and charged each lot with a portion of the cost of the improvement, and gave a credit for the amount that may have been paid under the original proceedings. The plaintiffs in error, in the various hearings of the matters in controversy herein since the original assessment was declared void, have always contended that the first proceedings, having been declared void by the supreme court of Illinois, there was no legal basis for the preceedings herein, and they further contend that such proceedings are in violation of the constitution of the United States, and in conflict with Sec. 10, ¶ 1 (first) thereof.

The plaintiffs in error also contend that the present proceedings are illegal and void because there was no valid ordinance as the basis of the proceedings under which the improvement was made; that a proceedings by special assessment for the purpose of collecting for the cost of an improvement, after its construction, by a prior and invalid ordinance, is contrary to the established laws of the State of Illinois; that the charge made against the property of plaintiffs in error, for such reasons, is made without due process of law, and in defiance of the provisions of the constitution of the United States, and of the fourteenth amendment thereof; that the ordinance under which said improvement was made having been declared void, such improvement was not authorized under the laws of the State of Illinois; that the present proceedings, being levied and made for the purpose of collecting for the cost of an improvement constructed under such circumstances, is also in conflict with the established laws of the State of Illinois, and with the provisions of the constitution of the United States, and

the fourteenth amendment thereof, as above referred to.

It is further contended that the only statute under which it is sought to collect for the cost of said improvement was adopted in 1895, and after said improvement had been constructed under a void ordinance. A judgment against the property of the plaintiffs in error for the cost of said improvement is, therefore, contrary to the established laws of the State of Illinois, and is also in conflict with said fourteenth amendment to the constitution of the United States.

It is also contended that the law which was approved June 24 and in force July 1, 1895, upon which it is sought to justify the present proceedings, is contrary to the constitution of the State of Illinois, and to the fourteenth amendment to the constitution of the United States, as above set forth.

II.

THE STATUTES OF ILLINOIS AND THE ORDINANCES RELIED ON HEREIN ARE AS FOLLOWS:

AN ACT in regard to the completion, improvement and management of public parks and boulevards and to provide a more efficient remedy for the collection of delinquent assessments. (Approved May 2, 1873. In force July 1, 1873.)

27. CORPORATE AUTHORITIES MAY LEVY PARK TAX.] Section 1. That in any town which is now included within the limits of any city in this state in which a board of park commissioners shall now exist, having authority by law to acquire land and the appurtenances in trust for the inhabitants of such town, and of a division or part of such city, and for such parties or persons as may succeed to the rights of such inhabitants, and for the public as a public promenade and pleasure grounds and

ways, but not for any other use or purpose without the consent of the majority, by frontage, of the owners of the property fronting the same, and without the power to sell, alienate, mortgage or incumber the same, the corporate authorities of such town shall have the power to levy and collect annually a tax not exceeding two and one-half mills on the dollar of the taxable property in such town, according to the valuation of the same as made for the purpose of state and county taxation, to be used and expended by such park commissioners in governing, maintaining and improving such parks and boulevards, or pleasure ways, and paying other necessary and incidental expenses incurred in and about the management of such parks and boulevards. (As amended by act approved and in force May 31, 1879, L. 1879, p. 213; Legal News Ed., p. 163.)

29. PROCEEDINGS FOR PARK IMPROVEMENTS.] Sec. 3. In case such board of park commissioners shall desire to improve any boulevard or pleasure way under their control, or any part thereof, * * * they shall make plans and specifications for such contemplated improvement. * * * Such corporate authorities may upon the receipt of such plans, specifications and estimates, at their next meeting, whether the same be a regular or special meeting, or at any succeeding meeting, or at a special meeting called for that purpose, determine by ordinance, to be entered upon the records of such town, whether such improvement shall be made or not; if they shall determine to make the same, they shall also prescribe that the same shall be made by special assessment or special taxation of contiguous property: PROVIDED, that the tax authorized by section 1 of this act shall not exceed the sum of $100,000 annually. If such ordinance shall provide that such improvement shall be wholly or in part made by special assessments, they shall direct the supervisor of such town to file a petition in the name of the town, in the county court of his county, for proceedings to assess the cost of such improvement; such petition shall recite the ordinance for the proposed improvement, and the plans, specifications and estimates of the cost thereof, and pray that the cost thereof may be assessed in the manner

prescribed by law. The proceedings to levy and collect such assessment subsequent to the filing of such petition, shall, in all things, as near as may be, conform to the provisions of article nine (9) of an act of the General Assembly of this state, entitled "An Act to provide for the incorporation of cities and villages," approved April 10, 1872, and all of the provisions of said article 9, so far as applicable, shall be in force and apply to any assessment made under this act. The clerk of such town shall perform the duties and possess the powers which are conferred upon clerks of cities and villages under said article 9: PROVIDED, that no improvement or sewer shall be made or constructed under the provisions of this section, except upon the petition of the owners of a majority of the land fronting on the proposed improvement or sewer * * * (See Ch. 24, Sec. 604.)

30. WHO ARE CORPORATE AUTHORITIES?] Sec. 4. *Be it further enacted*, that the town supervisor, clerk and assessor of such town be and they are hereby designated and constituted the corporate authorities of such town, and they, or a majority of them, may levy the tax or any of the assessments herein authorized, in the manner and for the purposes herein provided, except in towns or villages which may have, or which shall hereafter become organized as a town or village, under any law of this state, in which case the board of trustees of such town, so organized as a village, may levy the tax, or any of the assessments herein authorized, in the manner and for the purposes herein authorized.

The ordinance under which said improvement was constructed contains the following provisions:

Section 1. That the improvement of the sixty feet on the outside and on each side of said Douglas boulevard, or Douglas Park boulevard, from the south line of Garfield Park to the west line of Douglas Park, as desired to be made by the West Chicago park commissioners, and as shown by the plans, specifications and estimates transmitted by said West Chicago park commissioners to the corporate authorities of the town of West Chicago, shall be made, and that the cost thereof, together with the cost of making and collecting the assessment to be made

therefor, shall be paid by special assessment upon the contiguous property abutting on said boulevard so to be improved in the manner provided by law and in accordance with such plans, specifications and estimates.

Section 2. That said special assessment shall be divided into installments and that the first of said installments shall be 20 per cent. of the total amount of said assessment, and that the deferred installments shall bear interest at the rate of 6 per cent. per annum, as provided by law. (Pr. Rec., 26.))

The park act of 1895, under which this proceeding is being carried on, contains the following:

New Assessments.] Section 20. Where in any case such park board or park authorities having authority to improve any street or streets, or parts thereof, and to pay for the improvement thereof by special assessment, and said improvement shall have been made or partly completed and a special assessment levied therefor shall have been set aside by a court of competent jurisdiction, or the provision in any ordinance for the payment of said improvement by special assessment shall have failed or been declared void by any court of competent jurisdiction, then and in any such case, the said park commissioners or park authorities are hereby vested with power to levy, assess and collect a new special assessment on property benefited by said improvement or completed portion thereof in the same manner as in other cases, and the lots, blocks, tracts or parcels of land found benefited by said improvement or the completed portion thereof shall each severally be liable to pay for said benefits to the same extent and in the same proportion as in other cases: *Provided*, that the provisions and all proceedings in respect to such new assessments shall relate to and be in force in all cases in which at the time of the passage of this act work has been completed or partially completed under any special assessment proceedings or attempted special assessment proceedings heretofore levied or collected, or attempted to be levied and collected by any such board of park commissioners or park authorities; *And, provided further*, that such new assessments in such cases shall be levied within seven years from the date of confirmation or attempted confirmation of such original proceedings.

Article 9, referred to in park act, contains in part the following:

Section 23:

"Upon the filing of such petition the court shall appoint three competent persons as commissioners."

Section 24:

"It shall be the duty of the commissioners * * * to estimate what proportion of the total cost of such improvement will be of benefit to the public, and what proportion thereof will be of benefit to the property to be benefited, and apportion the same between the city or village and such property, so that each shall bear its relative equitable proportion; and having found said amounts, to apportion and assess the amount so found to be of benefit to the property upon the several lots, blocks, tracts and parcels of land in the proportion in which they will be severally benefited by such improvement; provided, that no lot, block, tract or parcel of land shall be assessed a greater amount than it will be actually benefited."

Hurd's Ills. Stat. (1874), Chap. 24, Art. 9, p. 235.

Section 24 is the portion of the statute which relates to special assessments as distinguished from special taxes. The statute which is applicable to an ordinance providing for a special tax is as follows:

Section 17:

"When said ordinance, under which said local improvement shall be ordered, shall provide that such improvement shall be made by special taxation of contiguous property the same shall be levied, assessed and collected in the way provided in the section of this act providing for the mode of making, levying, assessing and collecting special assessments."

Subsequently changes were made in the latter section, but such was the law in 1893 and up to 1895.

Section 39:

"Upon the application for judgment upon such assessment, no defense or objection shall be made or heard which might have been interposed in the proceeding for the making of such assessment, or the application for the confirmation thereof."

Section 40:

"When said general officer (who receives the report of delinquency) shall receive the report provided for in the preceding section, he shall at once proceed to obtain judgments against said lots, parcels of land and property for said special assessments due and unpaid, * * * and shall in the same manner proceed to sell the same for the said special assessments, * * *"

The only provision of the constitution of Illinois upon the subject is set forth in a ~~previous~~ subsequent portion hereof.

III.

THE PROCEEDINGS HEREIN, WHICH SEEK TO CHARGE THE ENTIRE COST OF THE IMPROVEMENT UPON CONTIGUOUS AND ABUTTING PROPERTY, ARE ILLEGAL AND OPPRESSIVE.

The cost of the improvement which the defendants in error seek to obtain by the proceedings herein is fully described in the record. The ordinance, and all proceedings, show that the assessment is levied against abutting property. There is no designation as to the boundaries which shall be subject to this charge; that is, in making a frontage assessment, the depth of the property, or its extent, is not considered, so that the property with a shallow depth is assessed in the same amount per front foot as property of a greater area.

It is self-evident that an improvement of the character described in the proceedings herein is, to all intents and

purposes, a pleasure-way, and it can be used for no other purpose. It cannot be denied that the district tributary to the improvement receives large and lasting benefits by reason of the improvement—benefits which enhance the value of the property in its vicinity, although it is not assessed for and bears no part of the cost thereof. It seems to us that to impose the entire cost of such an improvement upon the owners of property touching the same is a great injustice, and for this reason the plaintiffs in error herein, being about eighty-five in number, and representing substantially $100,000 of the assessment, have persistently objected to the payment of this tax, and the matter is now presented to this court in the hope that they may be saved from the burden of paying the entire cost of a pleasure-way which is a benefit to the whole park district. As shown above, the entire amount charged against the park district for this improvement is only $241.99. Plaintiffs in error insist that this division by the park commissioners, who are the defendants in error herein, is unjust, unreasonable and oppressive.

For these reasons, among others, the plaintiffs in error contend that the proceedings of the courts of Illinois in regard to the matter in controversy herein, should not be sanctioned in this court, and to support their position, several legal propositions are presented herewith.

IV.

BRIEFS OF ARGUMENT AND POINTS.

[Under this heading we have adopted, substantially, the brief of Messrs. Wilson and McIlvaine in the *Cummings* case.]

1. As above stated, the improvement herein was constructed under an ordinance passed March 28, 1893, by the Town of West Chicago; and by a proceeding thereunder it was sought to charge the entire cost of the improvement against abutting and contiguous property. The original proceeding having failed, the defendants in error herein instituted a new assessment for the purpose of obtaining the cost of the improvement previously constructed, by imposing a charge therefor against abutting and contiguous property. This, as we contend, is in conflict with the constitution of the United States, and upon the motion of plaintiffs in error, the trial court should have dismissed such proceedings.

Lyon v. *Town of Tonnawanda*, 98 Fed. Rep., 361.

Norwood v. *Baker*, 172 U. S., 269.

2. Under the established laws of Illinois no valid assessment can be made and levied against private property for the purpose of obtaining the cost of an improvement, unless the construction of such improvement is preceded by a sufficient and valid ordinance providing for a special tax or a special assessment to charge the property affected thereby.

City of Carlisle v. *County of Clinton*, 140 Ill., 512.

Weld v. *People*, 149 Ill., 258.

East St. Louis v. *Albrecht*, 150 Ill., 506.

3. Art. 9, Sec. 9, of the constitution of Illinois, contains the following:

"The General Assembly may vest the corporate authorities of cities, towns and villages with power to *make* local improvements by special assessment, or by special taxation of contiguous property, or otherwise."

4. Chapter 24, article 9, section 1, is an follows:

"The corporate authorities of cities and villages are hereby vested with power *to make* local improvements by special assessment, or by special taxation, or both, of contiguous property, or general taxation, or otherwise, as they shall by ordinance prescribe."

5. Under said constitution and the acts above mentioned, the manner of charging private property by special assessment and by special tax upon contiguous property are entirely different.

Kuchner v. *City of Freeport*, 143 Ill., 92.

6. The ordinance of March 28, 1893, which charges the entire cost of the improvement upon contiguous and abutting property, does not provide for a special assessment, but specifically provides for a special tax on contiguous and abutting property.

Special taxes are charged only upon abutting property, while special assessments are levied upon all property which receives a benefit by reason of the construction of the improvement. For this reason both the ordinance of March 28, 1893, and the ordinance for the present proceedings, provide for a special tax.

Hurd's Stat., Ill. (1899), Ch. 24, Art. 9, Sec 24.

The benefits from such proceedings and the limit to the charge on separate parcels of land are, therefore, disregarded. This was the fatal defect in the ordinance referred to in *Norwood* v. *Baker*, *supra*.

7. The ordinance of March 28, 1893, which was the only ordinance preceding the construction of the improvement, was wholly void as to its provision for a special assessment or special tax.

Culver v. *The People*, 161 Ill., 89.
Farrell v *Town West Chicago*, 162 Ill., 280.
White v. *Town West Chicoga*, 164 Ill., 196.
People v. *Eggers*, 164 Ill., 515.
Steenberg v. *The People*, 164 Ill., 478.
People v. *Lingle*, 165 Ill., 65.
People v. *Markley*, 166 Ill., 51.
O'Neil v. *People*, 166 Ill.. 565.
Walker v. *People*, 169 Ill., 474.

8. If construed not to be wholly void, then a petition based upon it, and addressed to the county court, asking the levy of a special assessment, would confer jurisdiction upon the county court, and its judgment would not be void.

Galena & C. U. R. R. Co. v. *Pound*, 22 Ill. 414.
Mulford v. *Stalzenback*, 46 Ill., 307.
Davis v. *City of Litchfield*, 155 Ill., 392.
Harvey v. *Tyler*, 2 Wall. (U. S.), 328.
Van Vleet on Collateral Attack, 82.

9. When the trial court and the supreme court of Illinois determined that the ordinance of March 28, 1893, was void, but nevertheless that it was a sufficient basis for a new special assessment or special tax for work previously done, it imposed upon the owners of property affected thereby a charge without due process of law.

C. B. & Q. R. R. Co. v. *Chicago*, 166 U. S. 226.
Backus v. *Fort Street U. D. Co.*, 169 U. S., 559.

Castillo v. *McConnico*, 168 U. S., 674.
Williams v. *Mississippi*, 170 U. S., 213, 224.
Neal v. *Delaware*, 103 U. S., 370, 394.
Ex parte Virginia, 100 U. S., 339, 347.
Henderson v. *Mayor of N. Y.*, 92 U. S., 259, 268.
Guthrie on 14th Amendment, p. 45.

10. An act of the legislature of Illinois, in force July 1, 1895, assuming to confer authority to pass a new ordinance for a special assessment, after the work had been done, so as to charge the cost of it on private property, is in conflict with the constitution of the United States.

City of St. Louis v. *Clemens*, 52 Mo., 133.
Brady v. *King*, 53 Cal., 44.
Cooley on Taxation, 1st Ed., p. 227.
Cooley on Const. Lim., 2nd Ed. (bottom page), 407, 420, 421.
Spencer v. *Merchant*, 125 U. S., 351.
New Orleans v. *Clark*, 95 U. S., 655.

IV.

WHAT, THEN, IS JURISDICTION?

(Adopted in part from brief of Messrs. Wilson and McIlvaine.)

The question of what constituted jurisdiction might be taken to be settled without citation of authorities. We understand that it consists in the right of a court to *enter at all* upon the consideration of the question presented to it.

Harvey v. *Tyler*, 2 Wall., 328.
Van Vleet on Collateral Attack, 82.
Board of Commissioners v. *Platt*, 79 Fed. Rep., 567.

The question what, as a matter of law, constitutes "jurisdiction" we take to be the same everywhere. The decisions of the courts of Illinois, both those above and below cited, are at least explicit on the subject. From them we extract the following propositions:

If the court, on the application to confirm the original assessment, had jurisdiction to *consider* the ordinance in that case, or the power to enter upon the subject at all, then its adjudication was not void. If it had no power to consider the petition in that case, or to determine whether the ordinance was good or bad, then its adjudication was void.

"They (the authorities) all agree that enough must appear either in the application or the order, or at least somewhere upon the face of the proceeding, to call upon the court to proceed to act; and all agree that when that does appear, then the court had properly acquired jurisdiction, or, in other words, is properly set to work. When the jurisdiction is thus established, and the court is authorized to hear, it follows as necessary consequence that it is authorized to adjudge, and that judgment being thus entered by authority of law, no matter how erroneous it may be, or even absurd—though it be made in palpable violation of the law itself, and manifestly against the evidence—is, nevertheless, binding upon all whom the law says shall be bound by it—that is, upon all parties and privies to it, until it is reversed in a regular proceeding for that purpose. While it remains a judgment it cannot be inquired into—nor its regularity questioned in any collateral proceeding."

Young v. *Lorain*, 11 Ill., 637.

"The rule is that enough must appear, either in the application or the order, or at least somewhere upon the face of the proceeding, to call upon the court to proceed to act, and when that does appear, then the court has properly acquired jurisdiction."

Mulford v. *Stalzenback*, 46 Ill., 307.

"When such an application was presented as required him (the judge) to act, then he acquired jurisdiction over the subject. He was then properly set to work. When jurisdiction is once shown to have attached, his authority to act was as complete as is the authority of the Circuit Court in any matter of which it has jurisdiction."

Galena & C. U. R. R. Co. v. *Pound*, 22 Ill., 414.

See, also,

Fitzgibbon v. *Lake*, 29 Ill., 177.

Reid v. *Morton*, 119 Ill., 131.

The foregoing doctrine as to what constitutes jurisdiction, applicable as well in special assessment cases as in others, is established in Illinois and not disputed. In the present case it is not denied that all the elements of a sufficient petition for a special assessment were contained in that presented to the court in 1893, *except one*. The statute required the petition to "recite the ordinance." It did recite that of March 28, 1893. If that ordinance *had any validity whatever*, so as to permit the court to enter upon a consideration of petitioner's rights under it, manifestly the order entered thereon would not be void, however erroneous.

Inasmuch as the statutes of Illinois have always authorized the levy of a special assessment in one installment, even in cases where it might, at the option of the municipality, have been divided into many, the provision of section 1 of the ordinance of March 28, 1893, would have conferred jurisdiction upon the county court to consider the petition, *if that section also had not been void.*

Keeler v. *The People*, 160 Ill., 179.

In that case the ordinance did not provide for a division of the assessment into installments, but the judgment separated it into five equal parts, and also made confirmation of the total. This was held the equivalent of a judgment in a single installment; the attempted division being incomplete, as not specifying when the installments were payable, and being disregarded. If, in the present case, the provision *for installments only* was void, then there remained a provision in the ordinance for *one* installment, as in the Keeler case. Even more clearly, for in this ordinance the second section only contained the provision dividing the total into installments, and if, as is now claimed, this was the only defect, section 1 would have been sufficient to sustain the court's jurisdiction. There was in this case an order confirming the total, as in the Keeler case.

In *Clark* v. *People*, 146 Ill., 350, it was said:

"It is the general rule that where the court has jurisdiction of the parties and subject-matter in a particular case, its judgment * * * is conclusive, and is not open to collateral impeachment by the parties thereto or their privies. * * * This rule has been applied by this court to judgments confirming special assessments so frequently that it is unnecessary for us to do more than cite the cases where such application has been made." (Citing eleven cases.)

The result is that the Culver case could not have been so decided if the first section of the ordinance of March 28, 1893, had not been void, as well as the second. By that decision the first section falls with the second.

The necessary effect, therefore, of the decision of the supreme court of Illinois in *Culver* v. *The People*, was to wipe out and extinguish every provision of the ordinance of March 28, 1893, for the levying of *any* special

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assessment or special tax. If there was anything left of it whatever, as a basis for a charge upon private property, the decision of *Culver* v. *The People* could not have been rendered.

This was the doctrine held by the Illinois court in *O'Neil* v. *People*, 166 Ill., 565, where the court said, referring to the Culver case:

"The rule is, that the ordinance can be attacked (on application for judgment) *on the ground it is void, but on this ground only*, for if the ordinance is void the court, in the assessment proceeding, had no jurisdiction, and all the proceedings based upon the ordinance are consequently void. Thus the question of the validity of the ordinance is a jurisdictional one, and may properly be raised in this proceeding."

The Culver case become the law of the State of Illinois, as the consideration of that ordinance was specifically before the court, and so the law stood when this proceeding was begun.

When, therefore, the new assessment against the property of these plaintiffs in error was levied in 1896, after the work had been completed, under a new ordinance providing for a special assessment, the situation was precisely one which, by the frequent decisions of the supreme court of that state, neither created nor permitted any charge against private property.

East St. Louis v. *Albrecht*, 150 Ill., 506.
Weld v. *People*, 149 Ill., 258.

Under those conditions, if the settled and established law of Illinois had been applied to the case of these plaintiffs in error, no such charge against their property could have been sustained. The motion of the plaintiffs in error to dismiss the proceedings should have been allowed.

V.

THE ORDINANCE OF MARCH 28, 1893, UNDER WHICH THE IMPROVEMENT WAS CONSTRUCTED, WAS VOID.

1. Such ordinance was void because it attempted to charge against abutting property the entire cost of the work provided to be done thereunder, without regard to the benefits.

Section 1 of the ordinance provides that the cost of the improvement, together with the cost of making and collecting the assessment, shall be paid by special assessment upon contiguous property abutting on said boulevard. (Pr. Rec., 26.) This was the only provision contained in the ordinance for the payment of any part of the cost of said improvement; neither does it provide for any inquiry into the question as to whether or not the abutting pieces of property will be benefited to the extent of the charge made against the same. This portion of the ordinance undoubtedly means that the entire cost of the work shall be paid for by the owners of abutting property. The expression, "by special assessment upon the abutting property," means nothing less than that in distributing the amount of the assessment upon the various pieces of abutting property the apportionment shall be by special assessment; that is, that such amount shall be distributed in proportion to the benefits derived from the assessment; that the assessment, however, was not so distributed can be reasonably inferred by an inspection of the original estimate, which appears on page 32 of printed record, where it is stated: "Amount per front foot, $16.59 4/10 +." The commissioners who were to make the assessment were required to confine the same strictly to such "contiguous property abutting on the boulevard."

Under the laws of Illinois it seems to us that it would be a very difficult undertaking to charge a *special assessment* for the making of an improvement upon contiguous and abutting property. In the case under consideration an estimate of the cost of the impromont was made, and commissioners were directed to assess such amount against abutting property. Unless all property was equally benefited then the amount to be raised by the assessment would be distributed unequally against abutting property, but in proportion to the benefits which each piece would receive by reason of the construction of the improvement.

As stated above, the ordinance and estimate herein are in conflict with any conclusion other than that the assessment was levied in a uniform amount and in accordance with the frontage, without regard to benefits, or to the value of the property assessed. The ordinance provides that the entire cost of the improvement shall be charged upon contiguous and abutting property, while it makes no provision in respect to actual benefits to be derived therefrom. Such an ordinance is forbidden by the constitution of the United States..

In *Norwood* v. *Baker*, 172 U. S., 269, this doctrine was established in this court. In that case the ordinance before the court provided that:

"The cost and expense of the condemnation of the property, including the compensation paid to the owners, the cost of the condemnation proceedings, the cost of advertising, and all other costs, and the interest on bonds issued, if any, should be assessed per front foot upon the property bounding and abutting on that part of Ivanhoe avenue as condemned and appropriated herein."

An assessment was made for the cost of said improvement, and charged on the abutting property, in accord-

anse with the said ordinance. In that case this court said, page 278:

"Undoubtedly abutting owners may be subjected to special assessments, to meet the expence of opening public highways in front of the property—such assessments, according to the well-established principles, resting upon the ground that special burdens may be imposed for special or peculiar benefits accruing from public improvement, * * * but the power of the legislature in these matters is not unlimited. * * * As already indicated, the principle underlying special assessments to meet the cost of public improvements is that the property upon which they are imposed is peculiarly benefited, and, therefore, the owners do not, in fact, pay anything in excess of what they receive by reason of such improvement. But the guaranties for the protection of private property would be seriously impaired if it were established as a rule of constitutional law that the imposition by the legislature upon particular private property of the entire cost of a public improvement, irrespective of any peculiar benefits accruing to the owner from such improvement, could not be questioned by him in the courts of the country."

And on page 290 the court said:

"The corporation" (the Village of Norwood) "manifestly proceeded upon the theory that the abutting property could be made to bear the whole cost of the improvement, whether such property was benefited or not, to the extent of such cost."

In that case the collection of the entire assessment, as to the complainant in the case, was enjoined, and the judgment affirmed in this court

"upon the ground that the assessment against the plaintiffs' abutting property was under a rule which excluded any inquiry as to special benefits, and the necessary operation of which was, to the extent of the excess of the cost of opening the street in question over any special benefits accruing to the abutting property therefrom, to take private property for public use without compensation." (Page 297.)

If the views expressed in the foregoing opinion are held to be applicable here, then it may follow that there never was a valid ordinance for the present assessment. Under such circumstances the result would be that it is, by the established laws of Illinois, and by the rulings of this court, illegal.

2. The state courts have held that the original ordinance was void, and in the *Culver* case, which was a collateral proceeding, it was held that an adjudication, based upon such ordinance, was without jurisdiction for that reason alone.

The motion of the plaintiffs in error to dismiss the proceedings should, therefore, have been allowed.

The ordinance is shown herein to have been declared void, and it is conceded so to be by the ordinance and petition which is the basis of the proceedings herein, and by the admission of counsel appearing upon the record and referred to in another portion hereof.

It may not be an easy task to logically reconcile the numerous opinions of the supreme court of Illinois in which the ordinance was held to be void with the opinion subsequently rendered in which the same ordinance was, in effect, declared to be not *wholly void*. The language of the supreme court in the opinion which is now under consideration does not amount, as we contend, to a *construction* of the ordinance, for that was settled in the cases where the matter was first passed upon by that court. The position of the supreme court of Illinois herein appears to be rather a refusal to apply the local laws to the case of the plaintiffs in error, a right which is guaranteed to them by the constitition of the United States.

When th is proceeding was begun, the law being that the ordinance was void, and the court having so decided, its later decisions in terms to the contrary will not be conclusive upon this court.

Thompson v. *Perrine*, 103 U. S., 816.

VI.

UNDER THE LAWS OF ILLINOIS NO ASSESSMENT CAN BE MADE FOR A LOCAL IMPROVEMENT UNLESS, WHEN THE WORK WAS DONE, A VALID ORDINANCE WAS IN EXISTENCE, REQUIRING THE COST THEREOF TO BE PAID BY SPECIAL ASSESSMENT.

(Under this heading we have also adopted, substantially, the brief of Messrs. Wilson and McIlvaine.)

Under the constitution and laws of Illinois, as uniformly construed by the supreme court, no charge by way of special assessment or special tax can be lawfully made against property for work which has been previously done, unless *preceding the work* there was a valid ordinance therefor in which provision was made to charge the cost against such property by special assessment or special tax. From this proposition there has been no departure in the courts of Illinois. The constitution of Illinois provides:

"The General Assembly may vest the corporate authorities of cities, towns and villages with power to *make* local improvements by special assessment," etc. (Art. 9, Sec. 9, Hurd's Stat., 1899, p. 68.)

This was the exact language of the first section of article 9 of the city and village act (Hurd's Stat., Ills., 1899, Chap. 24, p. 362), and the supreme court has held that the two are to be construed alike, the statute giving no

authority which is not conferred by this provision of the constitution.

Falch v. *People*, 99 Ill., 137.

The first section of the park act of July 1, 1895, (Hurd's Stat. Ills., 1899, Ch. 105, p. 1242), provides that:

"Any board of park commissioners or park authorities * * * are hereby vested with power and authority *to levy*, assess and collect *special assessments* * * * *for the purpose of improving any boulevard*," etc., etc.

All of these provisions have been construed to mean the same thing, that is, that the improvement must be made by special assessment, and such assessment must be provided for by the municipality in some lawful way before the improvement is laid down. The supreme court of Illinois has so determined in

East St. Louis v. *Albrecht*, 150 Ill., 506.

Weld v. *People*, 149 Ill., 258.

City of Carlisle v. *County of Clinton*, 140 Ill., 512.

and as to the park officers, in

West Chicago Park Commissioners v. *Sweet*, 167 Ill., 332.

Section 18 of article 9, city and village act (Hurd's Stat. Ill., 1899, Ch. 24, p. 362), contains the following provision:

"When any such city shall by ordinance provide for the making of any local improvement it shall, *by the same ordinance*, prescribe whether the same shall be made by special assessment, or by special taxation of contiguous property, or general taxation, or both."

The park act of 1873, under which the original ordinance was passed (Hurd's Stat. Ill., 1899, Ch. 105, p. 1213), contains the following:

"Such corporate authorities (the township officers, on application of the park commissioners), may * * * determine by ordinance * * * whether such improvement shall be made or not; if they shall determine to make the same they shall also prescribe that the same shall be made by special assessment, or special taxation of contiguous property."

The park act of 1895 contains the same provision as article 9 of the city and village act, above quoted.

Under the constitution, and by every statute under which the assessment can be levied, it is required that the ordinance which provides for the work shall also provide for the assessment.

The test as to the validity of the present assessment is not, therefore, the continued existence of an ordinance describing the improvement to be made, but the continued existence of such an ordinance, coupled with legislation requiring the work to be paid for by special assessment. This is the plain meaning of the constitution and of the statutes above cited, all of which provide that municipal corporations may make local improvements by special assessment or special tax on abutting property.

In the opinion of the supreme court of Illinios in the case of *Cummings* v. *West Chicago Park Commissioners*, 181 Ill., 136, and which is adopted as a part of the opinion under consideration herein, it is stated (137):

"The constitution and the statutes provide for making local improvements by special assessment, and we have uniformly held that they confer no authority to make a local improvement upon some other plan, or without any provision for a special assessment, and afterward provide for payment by such assessment. The improvement *is to be made by* special assessment, and consequently there must be a provision for its payment by that method *when it is made*. The liability to a special assessment

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must be created by the ordinance which provides for making the improvement, and such a liability is created by a provision of the ordinance that the cost of the improvement shall be paid by special assessment."

The first step, therefore, to create a charge for an assessment under the laws of Illinois, is the passage of such an ordinance as is designated above. If the ordinance of March 28, 1893, did not contain "a valid provision for a special assessment, or special tax, on abutting property" to pay for the improvement, then the present assessment and the proceedings therefor, which were begun after the improvement had been made, are without authority of law.

After the passage of the ordinance, the next step is an application to the county court by petition, reciting the ordinance for levying a special assessment or a special tax, and praying for a confirmation of such charge. Upon such petition, commissioners are appointed by the court for the purpose of making an assessment roll. Notices are then to be mailed and published, and where no objections are filed, the assessment is confirmed by default.

In case the amount of the assessment is not paid, steps are then taken to enforce the collection by sale. On this application no questions can be raised which would have been proper subject of defense on the application for confirmation.

Culver v. *The People*, 161 Ill., 89, is an appeal from a judgment of sale for an installment of the original boulevard assessment. The opinion in this case is the first one of a number rendered by the supreme court of Illinois in which the proceedings of 1893 were declared to be void. As the question of the validity of the ordinance was a

matter which could and should have been raised on the application for judgment of confirmation, the supreme court could not have considered the question on an appeal from a judgment of sale, unless the court entering the judgment of confirmation was without jurisdiction. The court held that the ordinance was void, and as a valid ordinance was necessary in order to give jurisdiction in the first instance, the judgment of sale was set aside.

In the *Culver* case, on page 100, is found the following:

"Where, however, the ordinance is void, all the proceedings based upon it, including the judgment of confirmation, must be void also. This necessarily results from the rule that a valid ordinance lies at the basis of every valid assessment. * * * So, here, this ordinance, which authorized an assessment payable in installments, and directs the deferred installments to draw annual interest, is invalid and consequently the judgment, confirming the special assessment for improving Douglas boulevard, was not authorized.

(Page 99.) "Where an assessment is claimed to be illegal from the fact that it was based upon an insufficient ordinance, the objection to the ordinance as being insufficient must be made upon the application to confirm the assessment, and if it is not made then, the judgment of confirmation will be regarded as conclusive when called in question collaterally. * * * But we apprehend that the objections to the ordinance, which are waived when not presented upon the application for a confirmation of the assessment, are those which show that the ordinance is insufficient in the sense of being irregular, or that it is insufficient for some reason which does not establish its invalidity or void character."

There are many other cases decided by the supreme court of Illinois on the same line, and the citation of such authorities herein is probably unnecessary. The decisions are found, however, in

People v. *Eggers*, 164 Ill., 515.

Steenberg v. *The People*, 164 Ill., 478.
The People v. *Lingle*, 165 Ill., 65.
People v. *Markely*, 166 Ill., 51.
O'Neil v. *The People*, 166 Ill., 565.
Walker v. *The People*, 169 Ill., 474.

As stated in the "Statement" herein, the *Culver* case was adopted by the supreme court in the following:

Cook v. *People*, 161 Ill., 209.
Farrell v. *Town of West Chicago*, 162 Ill., 280.
Connors v. *Same*, 162 Ill., 287.
White v. *Same*, 164 Ill., 196.

The three latter cases were writs of error. The only theory upon which to justify the finding in the *Culver* case is that the ordinance was wholly void, and that it conferred no authority and no jurisdiction upon the county court to take any proceedings.

In the order of March 12, 1897, hereinabove referred to, it is stated:

"It appears to the court that this court was without jurisdiction in the premises to enter an order or to take any proceedings at any time in said matter as to the property herein described." (Printed record, 43.)

The supreme court of Illinois, however, decided that the original ordinance was void, so that the county court had no jurisdiction to entertain or consider a petition based upon it, and also that it was valid so as to provide sufficiently for a new special assessment and to justify a subsequent proceeding to charge the property of plaintiffs in error with the cost of the improvement after its completion.

It cannot be contended that the laws of Illinois provide that an ordinance for an assessment, in form like the

present, should be deemed void so as to confer no jurisdiction on the court to consider it, and at the same time that it should be deemed valid so as to authorize a subsequent assessment for an improvement already made. This is precisely the position of the plaintiffs in error herein. They successfully contested the original proceedings and procured a determination by the Supreme Court of Illinois to the effect that that ordinance under which the improvement was constructed was void. This, under the established laws of Illinois, as we contend, should have been a bar to any further proceedings which might be instituted for the purpose of collecting for the cost of the improvement. The Supreme Court, however, in its subsequent decision found that the ordinance was not *wholly void*. If that court had come to the same conclusion in the prior proceedings, then plaintiffs in error herein would have been saved some rights and would have been able to interpose certain defenses to the original proceeding, which it is sought to deprive them of in the present instance.

We contend herein that the judgment of the Supreme Court of Illinois imposes upon the plaintiffs in error a heavy burden, and in defiance of the provisions of the fourteenth amendment as aforesaid.

VII.

THE COURTS OF ILLINOIS HAVE APPLIED A RULE TO PLAINTIFFS IN ERROR THE EFFECT OF WHICH IS TO CHARGE THEIR PROPERTY WITHOUT DUE PROCESS OF LAW.

(We have adopted, partially, the brief of Messrs. Wilson and McIlvaine under this head.)

We are not complaining in the present proceedings that

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the law of Illinois was not applied to the case of these plaintiffs in error, but that their property is sought to be charged herein to a large extent contrary to law, and without right, by the constituted authorities of the State of Illinois, and that this contravenes the 14th amendment to the constitution of the United States.

It is established in this court that the provisions of the 14th amendment to the constitution are a guaranty, not merely against a *statute* of a state in contravention thereof, but against a misapplication, *by the courts of any state*, of the local laws, although on their face not unjust or unreasonable, so as to produce the same oppressive effect as if done by statute.

As we understand the rule, if the judicial authorities of the state deny any litigant the equal protection of the laws, or by judgments charge him or his property, without due process of law, it is as much the act of the state as if done by the legislature.

C., B. & Q. R. R. Co. v. *City of Chicago*, 166 U. S., 228.

Backus v. *Fort. St. U. D. Co.*, 169 U. S., 559.

Costillo v. *McConnico*, 168 U. S., 674.

Williams v. *Mississippi*, 170 U. S., 213, 224.

Neal v. *Delaware*, 103 U. S., 370, 394.

Exparte Virginia, 100 U. S., 339, 347.

Henderson v. *Mayor of N. Y.*, 92 U. S., 259, 268.

Guthrie on 14th Amend., 45.

The fundamental law of Illinois, as construed by its courts, denies public corporations any right to levy a

special assessment to pay for a local improvement *after it is made.* This we have shown above, and this proposition, we apprehend, is undisputed.

East St. Louis v. *Albrecht*, 150 Ill., 506.
City of Carlisle v. *County of Clinton*, 140 Ill., 512.
Weld v. *People*, 149 Ill., 258.

The question before the trial court and the Supreme Court of Illinois was, on this point, whether or not the ordinance of March 28, 1893, which was the only prior authority for making the said improvement, contained valid provision for *any* special assessment; it was the contention of the plaintiffs in error that it did not, and, if not, the *whole assessment* was without lawful authority and void.

Considering the two questions decided by the state court together, the Federal question is, whether the use of one to head off a defense under the other is not denying a citizen his "due process of law." And, to determine this, the court will not assume that the decision of the two several questions involved was correct, even if, in their nature, both local. Nor, in considering them separately, is there any such presumption where the contention is that the local law was misapplied.

Guthrie, in his work on the 14th Amendment, page 45, says:

"The rule as to accepting the interpretation of the state court is not universal. It does not strictly apply to the effect and operation of state statutes. The Supreme Court may decline to concur in the view of the state court as to the real effect and operation of a state statute or ordinance, and its necessary tendency."

And he cites on this point:

Soon Hing v. *Crowley*, 113 U. S., 703, 710.

Yick Wo v. *Hopkins*, 118 U. S., 356, 366.

R. R. and Telephone Cos. v. *Board of Equalizers*, 85 Fed. Rep., 302, 317.

The same author, on page 73, says:

"Ordinarily the Supreme Court will not attempt to review and correct the errors of state tribunals in the general administration of the local laws, but if a law or ordinance be systematically administered so as to violate the 14th amendment the court will interfere." Citing:

Henderson v. *Mayor of N. Y.*, 92 U. S., 259, 273.

Chy. Lung v. *Freeman*, 92 U. S., 275, 279.

Neal v. *Delaware*, 103 U. S., 370.

Soon Hing v. *Crowley*, 113 U. S., 703, 710.

Arrowsmith v. *Harmoning*, 118 U. S., 194, 196.

Yick Wo v. *Hopkins*, 118 U. S., 356, 373.

Williams v. *Mississippi*, 170 U. S., 213, 225.

These then are, thus far,

THE FEDERAL QUESTIONS.

The courts of Illinois having held that the ordinance of March 28, 1893, was *void* so as to confer on the county court no power to consider an assessment levied under it ought to have held accordingly that the present proceeding was invalid. Their refusal to do so had the

effect to charge the property of plaintiffs in error without due process of law.

The first of the questions so involved, viz: the validity of the ordinance, was originally local, and this court will follow on that point the decisions of the local courts, as they were when the question arose, but will not permit them to refuse a citizen the benefit of the law thus ascertained.

See

Thompson v. *Perrine*, 103 U. S., 816,

where this court refused to follow the latest decision of the state court, departing from its former rulings after the rights of the parties arose.

In *Anderson* v. *Santa Anna*, 116 U. S., 361, on a case where the Supreme Court of Illinois had departed from a line of decisions after the question at issue arose, this court said:

"If, according to the law of Illinois, as declared by its highest court at the time the bonds in suit were issued, the act of February 28, 1867, was a valid exercise of legislative powers, the rights of purchasers or holders could not be affected by a subsequent change of decision."

The same doctrine was applied to previous statutes as construed by the local courts at the time the right (or conversely the demand) arose in *Douglass* v. *County of Pike*, 101 U. S., 677, cited in the Santa Anna case.

The second and third of said questions are not of local law, or only partially so; but if they were wholly so this court would still inquire whether the decision on these points was a departure from the rules which prevailed when these proceedings were begun; and also whether they were a fair application to this case of the local laws as usually construed.

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The most vital principle in each of these propositions, as Federal questions, is the *misapplication* by the state court of its established rules of law, or its departure from principles theretofore settled, so as to deny the benefits thereof to plaintiffs in error as effectively as if it were done by command of the legislature.

The decision complained of is also in conflict with the first clause of the fourteenth amendment in that it discriminates against the litigants in this case and denies to them rights which are conceded to litigants in general.

VIII.

THE PARK ACT OF 1895, IF IT BEARS UPON THE CASE UNDER CONSIDERATION, IS IN CONFLICT WITH THE FOURTEENTH AMENDMENT.

The twentieth section of the act approved June 24, 1895, and in force July 1, 1895, entitled "An Act to enable park commissioners or park authorities to make local improvements and provide for the payment therefor," is the only statutory authority for a new proceeding to be begun and prosecuted after the improvement has been completed.

Said section 20 is set forth in full herein.

It is recited in the petition for the present improvement that the new ordinance, which is the basis of the present preceeding, rests upon the authority of said section. It is recited also that the previous proceedings had been "declared void by a court of competent jurisdiction," and set aside by order of court.

Prior to the passage of said act, in 1895, *after said work had been completed*, there was no statute which

authorized a new assessment for such an improvement, under these conditions. The "city and village act" then in force contained such a provision, but had no application to parks or park boards, or town authorities. The main ground of the decision in *Culver* v. *The People*, 161 Ill., 89, was that the provision of the city and village act, authorizing a division of assessments into installments, had no application to assessments by park boards.

Such then was the condition on July 1, 1895, that a previous proceeding to charge this property for the said improvement had been "declared void"; that the work had been completed; that no law existed under which a new assessment could be made. Thereupon the legislature passed the law in question, assuming to create a right to charge the property of plaintiffs in error for previous work.

The provision of this act of 1895 authorizing an assessment for work previously done was, we submit, contrary to the fourteenth amendment. Under the constitution and laws of Illinois, no property could be charged for the cost of an improvement except in pursuance of a right which existed *before the work was done.*

No municipal act done without statutory authority can impose an obligation or duty.

Marsh v. *Chesnut*, 14 Ill., 223.
Billings v. *Detten*, 15 Ill., 218.
Conway v. *Cable*, 37 Ill., 32.
Anderson v. *Santa Anna*, 116 U. S., 360.

And no such void imposition could be made good afterwards, so that a mere remedy provided later could vitalize it *ab initio.* The ordinance is only one step in a series of proceedings which must depend upon statutory

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authority, and the existence of the ordinance without the statute does not charge the property nor have any effect whatever thereon. Without the new power conferred by this act the Park Board could never have acquired a right to sell the property of plaintiffs in error for this improvement, and this is an essential element of the obligation.

In Missouri a state of facts like the present arose. Proceedings were taken to levy a special assessment. Pursuant to this the work was done, and the contractor, according to the procedure in that state, undertook to collect the money, but the proceedings were found defective. Afterward the legislature, by a new statute, conferred power to make a re-assessment, which was done. In *City of St. Louis* v. *Clemens*, 52 Mo., 133, the validity of the new act was in question, and the court said:

"The City of St. Louis, under the law as it stood when the contract was made and the work done for which the assessment was made for which this suit is brought, could only authorize the making of improvements of the kind in question so as to charge the adjoining property with the cost thereof by a compliance with the requirements of her charter. This was not done in this case, so that the doing of the work by the contractor created no obligation on the part of the appellant to pay therefor, nor did it create any lien on the property of the appellant to secure the payment of the cost of the work, nor did it create any right in favor of the contractor to demand or recover the same from either the defendant or his property, either in the name of the city for his use or otherwise. * * * Such right or liability was created for the first time by the act of 21st of March, 1870. *How then can we say that this act does not create a new right in favor of the contractor, and incur a new liability on the part of the defendant?*"

The same in substance was held by the Supreme Court of California in *Brady* v. *King*, 53 Cal., 44.

If the act of 1895 did not cure the defect in the ordinance of March 28, 1893, then it was never cured, and the act of 1895 could not, under the constitution of Illinois, as construed by its courts, justify any assessment for the work previously completed.

In *Pells* v. *City of Paxton*, 176 Ill., 318, we find the following:

"A city council has no right to make an improvement and then, after the improvement is made, pass an ordinance providing for the making of the improvement. The passage of the ordinance must precede the making of the improvement, *and the making of the improvement and all steps thereafter are absolutely void unless preceded by a valid ordinance.*" (Page 326.)

The defects in the first ordinance were incapable of being cured by a retroactive law, for the legislature had no power to dispense with the vital requirement that a valid ordinance should be the first step, and no retroactive statute can cure omissions which it could not have authorized.

From Cooley on Taxation we quote:

"One very precise limit to the power to cure these proceedings is this: They cannot be cured when there was a lack of jurisdiction to take them. This is a rule applicable to every species of legal proceedings. Curative laws may heal irregularities in action, but they cannot cure a want of authority to act at all.

* * * * *

"It is certain that whatever the legislature could not have authorized originally it cannot confirm. The unauthorized acts of individuals cannot confer upon the state a power it did not before possess. Therefore no unconstitutional tax can be confirmed, and none that entirely wants any essential element of taxation." (P. 227.)

From Cooley on Constitutional Limitations (2d Ed., bottom page 407), we quote:

"The rule applicable to cases of this description is substantially the following: If the thing wanting, or which failed to be done, and which constitutes the defect in the proceedings, is something the necessity for which the legislature might have dispensed with by prior statute, then it is not beyond the power of the legislature to dispense with it by subsequent statute. And if the irregularity consists in doing some act, or in the mode or manner of doing some act, which the legislature might have made immaterial by prior law, it is equally competent to make the same immaterial by a subsequent law."

From the same volume (bottom page 420):

"But the healing statute must in all cases be confined to validating acts which the legislature might previously have authorized. It cannot make good retrospectively acts or contracts which it had no power to permit or sanction in advance."

From the same volume (bottom page 421):

"But if township officers should assume to do acts under the power of taxation which could not lawfully be justified as an exercise of that power, no subsequent legislation could make them good."

The foregoing rule is well established in this court.

Anderson v. *Santa Anna*, 11 U. S., at pp. 364, 365.

St. Joseph Township v. *Rogers*, 16 Wallace (U. S.), at p. 663.

Thomson v. *Lee County*, 3 Wallace (U. S.), at p. 331.

See, also,

Folsom v. *Township of Ninety-six*, 59 Fed. Rep., at p. 69.

In Illinois practically the same thing has been held. See *Marsh* v. *Chesnut*, 14 Ill., 223. It was held that a

judgment for taxes could not be validated by a subsequent law, where the assessment had not been returned and completed as required by the statute. The same thing was also held in *Billings* v. *Detten*, 15 Ill., 218; *Conway* v. *Cable*, 37 Ill., 82. In the case last cited the court said that a statute purporting to validate a void tax sale was void as depriving a person of property without due process of law.

Since by the constitution of Illinois a *previous* valid ordinance, providing for the assessment, is *essential* to charge private property, and this, by the terms of the later ordinance in this case, is admitted to have been void, the act of 1895 either did not apply to it at all or did not effectually aid it.

The present is not like those cases in which an equivalent has been received and a moral obligation exists to make recompense which, in some cases, may be enforced by subsequent legislation.

In *New Orleans* v. *Clark*, 95 U. S., 650, this court held that the legislature might, by a new act (not forbidden by the state constitution), require a city to levy a tax for the payment of bonds, the equivalent of which it had received, but said in the same connection:

"A very different question would be presented if the attempt were made to apply the means raised to the payment of claims for which no consideration had been received by the city." (P. 653.)

In the same case the court said:

"Equitable claims which had existed against the dissolved city would continue as before, and be equally subject to legislative recognition and enforcement, or their payment might be required, as in this case, by the act of annexation."

The plaintiffs in error have received nothing from the

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Park Board. It may be assumed that their property is, to a certain extent, increased in value by the improvement, but the obligation is not of that kind which the court considers sufficient to justify retroactive statutes. Nearly the entire South Park boulevard system was created and paid for by general tax, but this created no obligation upon the property owners abutting upon it, either legal or moral, to pay for it.

This was held by the supreme court of Missouri not to be the equitable obligation which alone can justify a retrospective statute to enforce it; and it was also held that the rules above cited relating to general taxes have no application.

City of St. Louis v. *Clemens*, 52 Mo., 143.

This element, therefore, may be disregarded.

The act of 1895 is not retroactive in any event so as to make any of the proceedings good from the beginning. If it cures any of these defects at all, it does so only *from the date it took effect*; and this would leave the constitutional requirement of a valid *pre-existing* ordinance still lacking.

In *Spencer* v. *Merchant*, 125 U. S., 351, this court held that a statute passed in 1881 to rectify errors in a previous assessment levied under an act of 1869, justified and authorized a new and independent assessment only, and thus became effective only from its date On this ground alone that proceeding was supported; and it was because of an opinion to the contrary on that subject that two of the judges of this court dissented.

Such was also the decision in the case of *Jones* v. *Tonawanda* (N. Y. Ct. of Appeals), 53 N. E. Rep., 280.

And in *New Orleans* v. *Clark*, 95 U. S., 655, this court held that the statute requiring a tax to be levied for the payment of a pre-existing obligation, for an equivalent already received, "is not a retroactive law—no more so than an appropriation act providing for the payment of a pre-existing claim."

And the court in the same case said:

"The constitutional inhibition (forbidding the passage of retroactive statutes) does not apply to legislation recognizing or affirming the binding obligation of the state, or of any of its subordinate agencies, with respect to past transactions. It is designed to prevent retrospective legislation injuriously affecting individuals, and thus protect vested rights from invasion."

IX.

THE PLAINTIFFS IN ERROR HEREIN RELY UPON THE ORIGINAL AND ADDITIONAL ASSIGNMENTS OF ERROR HEREIN, WHICH ARE AS FOLLOWS:

First. The court erred in affirming the judgment of confirmation against the property of plaintiffs in error, and each of them.

Second. The county court of Cook County should have dismissed the petition for confirmation of said assessment on the motion of plaintiffs in error, on the ground that upon its face the record was insufficient to support said assessment, and also on the further ground that, in view of the evidence before the court, the same appeared to be insufficient in law, and said supreme court erred in sustaining said refusal and in holding that the same was correct.

Third. The court erred in holding that the county

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court of Cook county had jurisdiction to confirm the assessment appealed from as to the property of the plaintiffs in error, and each of them.

Fourth. The court erred in holding that the property of plaintiffs in error could lawfully be assessed for the said improvement by an ordinance and proceedings originating after the work was done, the original ordinance for the assessment having been void.

Fifth. The court, having held that the original ordinance for said improvement, passed in March, 1893, was insufficient to support a proceeding to confirm an assessment therefor, erred in holding that said ordinance was sufficient to support such a proceeding after the work was done, based on a new ordinance passed after the completion of the work.

Sixth. The court erred in holding that the new ordinance, passed after the completion of said improvement, was sufficient to justify the proceeding and judgment appealed from.

Seventh. The county court erred in not granting the motion of plaintiffs in error for a new trial of said cause on the ground of newly discovered evidence, and said supreme court erred in sustaining said county court therein.

Eighth. Said county court erred in not dismissing said proceedings on motion of plaintiffs in error because said proceedings were being carried on and were instituted under a statute passed subsequently to the completion of said improvement, and said supreme court erred in sustaining said county court in refusing to grant said motion.

Ninth. Said county court erred in not sustaining the

motion of plaintiffs in error to dismiss said proceedings because said defendants in error did not produce and prove that they had a consenting petition for the making of said improvement signed by a majority of the owners of real estate fronting thereon, as required by law, and said supreme court erred in sustaining said county court therein.

Tenth. Said county court erred in not granting the motion of plaintiffs in error to dismiss said proceedings on the ground that said proceedings and the statute under which the same were conducted were contrary to the Constitution of the United States, as set forth in objections interposed in said county court on behalf of said plaintiffs in error, and said supreme court erred in sustaining said county court.

Eleventh. Said supreme court erred in overruling the assignments of error of plaintiffs in error and each thereof, and in not sustaining the same.

Twelfth. That by the said record it appears that the judgment aforesaid was given for the said West Chicago Park Commissioners against the said above-named plaintiffs in error, whereas, by the law of the land, the said judgment ought to have been given for the said above-named plaintiffs in error and against the said West Chicago Park Commissioners, and the said above-named plaintiffs in error pray the judgment aforesaid may be reversed, annulled, and held for nothing and that they may be restored to all things which they have lost by occasion of the said judgment.

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ADDITIONAL ASSIGNMENTS OF ERROR.

13th. Said Supreme Court of Illinois erred in sustaining said judgment of confirmation against the property of each of the plaintiffs in error herein, for the reason that such judgment denied to each of said plaintiffs in error the rights and privileges guaranteed unto them, respectively, under and by virtue of the Fourteenth Amendment to the Constitution of the United States, and particularly to that portion of section 1 which is as follows:

"* * * No state shall make or enforce any law "which shall abridge the privileges or immunities of "citizens of the United States; nor shall any state deprive "any person of life, liberty or property without due "process of law, nor deny to any person within its "jurisdiction the equal protection of the laws."

14th. Said Supreme Court of Illinois erred in sustaining the order of said County Court of Cook County, which order denied the motion of said plaintiffs in error to dismiss said petition for confirmation, because the record herein, on its face, was insufficient, both in law and under the constitution of the State of Illinois, to support the same, for the reason that no sufficient and valid ordinance was the basis of the proceedings under which said alleged improvement was constructed, although under such laws and said constitution a valid ordinance must be the basis thereof; that it appeared, upon the trial of said cause, that the original ordinance for said improvement was invalid, and the denial of said motion and the affirmance of said judgment by said Supreme Court, imposes a burden upon the property

of the plaintiffs in error without due process of law, and it is a denial to each of them of the equal protection of the law.

15th. The Supreme Court of Illinois erred in holding that said County Court had jurisdiction to confirm said assessment as to the property of said plaintiffs in error, because such judgment of confirmation imposes a charge upon said property without jurisdiction therefor under the laws and constitution of the State of Illinois, for the reason that there was not a preceding valid ordinance as the basis of said proceedings, under which it is alleged said improvement was constructed, and the affirmance of said judgment by said Supreme Court of Illinois as to the property of said plaintiffs in error is, therefore, without due process of law, and it denies to them, respectively, the equal protection of the laws, in contravention of the Fourteenth Amendment to the Constitution of the United States.

16th. The Supreme Court of Illinois erred in sustaining said judgment of confirmation, and in holding that the property of said plaintiffs in error could be lawfully assessed for the cost of said alleged improvement by an ordinance and under proceedings which originated after the complete construction of such improvement, the original ordinance for the making thereof having been declared void. The established laws of the State of Illinois prohibit the confirmation of a special assessment for work done under a prior invalid ordinance, and the affirmance of the judgment of said County Court imposes a charge upon the property of the plaintiffs in error herein contrary to the provision of the Fourteenth Amendment to the Constitution of the United States.

17th. Said Supreme Court also erred in sustaining said judgment, for the reason that the proceedings which resulted in the entry of such judgment of confirmation against the property of plaintiffs in error herein was instituted and carried to a conclusion and judgment entered under a certain alleged law which was passed subsequent to the making and completion of said alleged improvement; and also because the proceedings under which said alleged improvement was constructed, and which were the basis of the proceedings for confirmation herein, were declared invalid by the Supreme Court of Illinois; that by reason of the judgment of confirmation of said County Court, and the affirmance thereof by said Supreme Court, the plaintiffs in error herein will be deprived of their property without due process of law, and contrary to the provisions of the Fourteenth Amendment to the Constitution of the United States, unless said judgment of confirmation and the affirmance thereof are set aisde.

18th. Said Supreme Court of Illinois erred in sustaining said judgment of confirmation and in not setting the same aside, for the reason that said judgment is contrary to the Constitution of the United States and to article 1, section 10 (first), thereof, because the act of the legislature of said State of Illinois, approved June 24, 1895, and in force July 1, 1895, under which said proceedings were carried on in said County Court, were passed and became a law of said state after said alleged improvement had been fully constructed under a previous invalid proceeding.

19th. Said Supreme Court of Illinois erred in affirming said judgment, because such confirmation is contrary to the laws of said State of Illinois in force, and by virtue

of which said alleged improvement was constructed, which laws required that no improvement should be constructed under and by virtue of said act, "except upon the "petition of the owners of a majority of the land fronting "on the proposed improvement or sewer"; that neither said defendants in error nor the Town of West Chicago, the petitioner in the orginal preceedings under which said alleged improvement was constructed, nor any other person or corporation in their or its behalf, ever obtained such consenting petition; by means whereof said original proceedings and the proceedings herein are contrary to the constitution and to the established laws of the State of Illinois, and are also contrary to the Constitution of the United States, and to the Fourteenth Amendment thereof.

20th. Said Supreme Court of Illinois erred in confirming said judgment, and in not setting the same aside, because said assessment, as to the respective pieces of property of the plaintiffs in error, is levied and assessed against the same in the manner of a special tax, or upon a basis of frontage, without regard to the value of the various pieces of property, and in defiance of the Constitution of the State of Illinois, and Section 9 of Article IX thereof; that said decision and finding of said Supreme Court is also contrary to the Constitution of the United States, and of the Fourteenth Amendment thereof, in this, that the plaintiffs in error are deprived of their property and are denied the rights guaranteed to them in and by said amendment to the Constitution of the United States.

21st. Said Supreme Court erred in sustaining said judgment for the reason that, at the time of the construction of said alleged improvement, there was no ordinance,

either valid or invalid, which set forth the nature, character, locality and description of said improvement, as is and was required by the laws of the State of Illinois, at the time of the construction of such improvement; that the improvement, as constructed, is other and different from that set forth in any ordinance, specifications or plans for the making thereof; that the construction of such improvement, without a valid ordinance, and without a sufficient estimate therefor, is contrary to the established laws of the state of Illinois, and the constitution thereof; by means whereof, the plaintiffs in error were deprived of the rights to which they are entitled under and by virtue of said Fourteenth Amendment to the Constitution of the United States.

22nd. The Supreme Court of Illinois erred in holding that a new ordinance, passed after the completion of said alleged improvement, was sufficient to justify the proceedings and judgment appealed from, because such judgment is contrary to the well-established laws of the State of Illinois; and said County Court thereby sought to charge the property of each of the plaintiffs in error with a public burden and without any statute therefor, except an act approved June 24, 1895, and in force July 1, 1895, which statute is the basis of said alleged assessment proceedings herein, although such statute was without legal force for such purpose; that thereby said Supreme Court and said County Court denied to each of the plaintiffs in error their right to the equal protection of the law, and said courts also denied to them such due process of law as is guaranteed by the Fourteenth Amendment to the Constitution of the United States.

23rd. Said Supreme Court of Illinois erred in sustaining the judgment of said County Court, and in holding

that the act of the legislature of the State of Illinois, and particularly Section 20 thereof, approved June 24, 1895, and in force July 1, 1895, was constitutional and valid, because said act is retroactive in effect and by it said defendants in error seek to charge the property of each of the plaintiffs in error with a public burden, and said defendant in errror and said courts thereby attempt to deprive each of the plaintiffs in error of the rights and privileges guaranteed to them, respectively, by said Fourteenth Amendment to the Constitution of the United States.

24th. Said Supreme Court of Illinois erred in sustaining said judgment of said County Court, because the subject-matter involved in the proceedings herein were fully determined in and by an order entered on March 12, 1897, in said County Court of Cook County, from which order no appeal was taken, in a certain proceedings known in said County Court as No. 10,655; that the entry of the judgment of confirmation under consideration herein was contrary to said order herein lastly referred to, because the subject-matter thereof had been fully adjudicated, and that by reason thereof the proceedings herein are unauthorized by and are contrary to the established laws of the State of Illinois; and in consequence of the entry of said judgment of confirmation, the said courts have denied to each of the plaintiffs in error herein the rights, privileges and immunities guaranteed under and by virtue of the Constitution of the United States, and of said Fourteenth Amendment thereto.

25th. Said Supreme Court of Illinois erred in affirming said judgment, for the reason that it is the settled law of the State of Illinois, and the established construction of its constitution, that the ordinance of March 28, 1893,

which was the ordinance by virtue of which said improvement is alleged to have been constructed, was absolutely void at the time the present proceedings were instituted; and said courts of the State of Illinois, by reason of the conclusions adopted by each thereof, have departed from said settled law of the State of Illinois in the matter under consideration, and each of said courts has attempted to impose the present burden upon the property of each of said plaintiffs in error, contrary to said established law, all of which is in contravention of the Fourteenth Amendment to the Constitution of the United States.

Summary.

The plaintiffs in error, in summarizing their contentions herein, respectfully petition your Honorable Court to set aside the findings of the supreme court of Illinois for the reasons which appear in their assignments of error and for the following causes:

1. The county court had no jurisdiction because the matter in controversy had been fully determined before the hearing herein, and there was no basis for this proceedings. The supreme court should have so found.

2. The order of March 12, 1897, disposed of the matter in controversy herein as to property of plaintiffs, and the supreme court should have so found.

3. There was no valid ordinance as a basis for the present proceedings when the improvement was constructed, so the work which has been done, and the cost of which the defendants in error are seeking to collect, was done without the sanction of law, and, it is contended that under the findings of the courts of Illinois,

the plaintiffs in error are denied the equal protection of the law

4. The improvement as constructed, is not described in any ordinance, as is shown by the motion for a new trial, where is set out the affidavit of Dorr, the engineer who constructed the improvement. This is contrary to the laws of Illinois.

5. The improvement is in fact a part of the park system, and it should be paid for out of the general fund, which is provided for in the park act set forth herein.

6. The laws affecting the matter in controversy herein, as construed by the supreme court of Illinois, are, as we claim, in conflict with the well-established laws of the State of Illinois, as existing at the time of the making of the original ordinance and the construction of the improvement, and the conclusions of the supreme court, which appear in the record herein, are not only in conflict with the laws of said state, but such conclusions are also contrary to the constitution of the United States, as set forth herein.

For these various causes the plaintiffs in error feel that they are warranted in bringing their grievances before your Honorable Court for such determination as may be agreeable to the court. Trusting that our contentions may receive a favorable consideration, and that the findings of the supreme court of Illinois may be set aside, the foregoing is

Respectfully submitted.

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